IN THE COURT OF APPEALS OF THE STATE OF ALASKA

DILLON B. PRATER-COX, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12507 Trial Court No. 3PA-14-03015 CR MEMORANDUM OPINION No. 6884 — July 8, 2020

Appeal from the Superior Court, Third Judicial District, Palmer, Gregory Heath, Judge.

Appearances: Elizabeth D. Friedman, Law Office of Elizabeth D. Friedman, Redding, California, under contract with the Office of Public Advocacy, Anchorage, for the Appellant. Terisia K. Chleborad, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Judge ALLARD.

Dillon B. Prater-Cox was convicted of one count of second-degree misconduct involving a controlled substance and two counts of fourth-degree misconduct involving a controlled substance after he admitted to police officers that there was heroin

in his hotel room.[1] Prior to trial, he moved to suppress his incriminating statements on the ground that he was subject to a custodial interrogation and never read his *Miranda* rights.[2] The superior court rejected his argument after holding an evidentiary hearing. Prater-Cox now renews his *Miranda* argument on appeal. For the reasons explained here, we conclude that Prater-Cox was not in custody for *Miranda* purposes, and we therefore affirm his conviction.

Background facts

Two police officers approached Prater-Cox in a parking lot outside his hotel after he was observed participating in a suspected drug deal. The officers were in plain clothes and did not display weapons. They introduced themselves and asked Prater-Cox how he was doing.

One of the troopers then told Prater-Cox that they had just observed him conducting a drug deal. Prater-Cox denied being involved in a drug deal. The officers continued asking Prater-Cox questions over the course of the next twelve minutes. Some of the questions were simple factual inquires about where Prater-Cox was staying, but others were more accusatory and focused on the officers' suspicions that Prater-Cox was a drug dealer. Prater-Cox denied these accusations.

Approximately four minutes into the conversation, Prater-Cox received a phone call from his mother. One of the officers took the phone from Prater-Cox's hand and answered it himself. After confirming that the caller was, in fact, Prater-Cox's mother, the officer allowed Prater-Cox to speak to her.

---

[1] Former AS 11.71.020(a)(1) (2014), former AS 11.71.040(a)(3)(A)(i) (2014), and AS 11.71.040(a)(5), respectively.

[2] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

The officer took Prater-Cox's phone a second time approximately ten minutes into the conversation — this time because the officer believed that Prater-Cox was trying to delete text messages off his phone. The officers then told Prater-Cox they were seizing his phone "as evidence."

Shortly after seizing his phone, the officers told Prater-Cox that they were applying to get a search warrant for his hotel room, and they asked him if there was anything he wanted to tell them about possible contraband in his room before they found it on their own. When Prater-Cox said there was not, the officers stated that they did not care about "little half-gram and little one-gram dealers." In response, Prater-Cox said, "Yeah, I got some fucking dope. You guys can have the fucking dope." Prater-Cox then gave the officers consent to search his hotel room.[3] Based on this consent, the police searched his hotel room without a warrant and discovered twelve grams of heroin on the bedside table. He was arrested four-and-a-half months later.

Prater-Cox's motion to suppress

Prior to trial, Prater-Cox filed a motion to suppress the evidence against him on the grounds that the troopers did not advise him of his *Miranda* rights and that his consent to search was therefore invalid. The State opposed the motion, arguing that no *Miranda* advisement was necessary because Prater-Cox was never in custody for purposes of *Miranda*. The trial court held an evidentiary hearing at which the troopers testified and an audio recording of the interaction was submitted.

In its order denying the motion to suppress, the trial court found that Prater-Cox had been subjected to an investigative stop but that he had not been subjected to a custodial interrogation for purposes of *Miranda*. The court focused on the "mundane"

---

[3] The voluntariness of Prater-Cox's consent is not challenged on appeal.

nature of the majority of questioning and the fact that there was no show of force by the troopers and no indication that they wished to arrest Prater-Cox or detain him for a lengthy period. The court specifically found that the troopers acted "peaceably" and that the investigation "never turned coercive."

Prater-Cox's arguments on appeal

On appeal, Prater-Cox renews his claim that the troopers violated his Fifth Amendment rights by subjecting him to a custodial interrogation without giving him the warnings required by *Miranda v. Arizona*.[4]

The parties do not dispute that Prater-Cox was seized for purposes of the Fourth Amendment. However, whether Prater-Cox was subjected to a custodial interrogation turns on whether there was a "'restraint on freedom of movement' of the degree associated with a formal arrest."[5] We answer this question by examining the totality of the circumstances surrounding the police interrogation.[6] Specifically, we examine "when and where [the interrogation] occurred, how long it lasted, how many police were present, what the officers and the defendant said and did, the presence of actual physical restraint on the defendant or things equivalent to actual restraint . . . , and whether the defendant was being questioned as a suspect or as a witness."[7] We also look

---

[4] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[5] *State v. Smith*, 38 P.3d 1149, 1154 (Alaska 2002) (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983)).

[6] *Id.*

[7] *Hunter v. State*, 590 P.2d 888, 895 (Alaska 1979).

at how the defendant got to the place of questioning and whether the defendant left freely or was detained or arrested.[8]

As the trial court found, most of the facts in this case point toward the conclusion that Prater-Cox was not in custody: the interrogation was brief, lasting only twelve minutes;[9] only two police officers were present and they never displayed their weapons;[10] the tone of the exchange was "light" and "peaceabl[e]";[11] Prater-Cox was not physically restrained during the encounter;[12] nor was he arrested even after police found heroin in his hotel room.[13]

---

[8] *Id.* (explaining how facts pertaining to events before and after the interrogation are relevant to the court's determination as to "whether the defendant, as a reasonable person, would have felt free to break off the questioning"); *Smith*, 38 P.3d at 1154-56, 1159 (highlighting specific facts about "preinterrogation events" and "postinterrogation events").

[9] *See Smith*, 38 P.3d at 1159 (concluding that the interview's "brief thirty minute duration" favored a finding of no custody); *State v. Murray*, 796 P.2d 849, 850 (Alaska App. 1990) (concluding no *Miranda* custody for an interview that lasted twenty-five minutes); *State v. Gard*, 358 N.W.2d 463, 465 (Minn. App. 1984) (concluding no *Miranda* custody for thirty-minute conversation).

[10] *Compare Murray*, 796 P.2d at 851 (concluding that the defendant was not in custody, in part, because nothing in the record indicated the officer "used a show of force or any other coercive tactic" during the encounter), *with Moss v. State*, 823 P.2d 671, 672, 675 (Alaska App. 1991) (concluding that the defendant was in custody for *Miranda* purposes when ten police officers entered his residence in riot gear with their guns drawn).

[11] *See Smith*, 38 P.3d at 1157 (concluding that the "calm" and "sympathetic" tone of the police officer was a factor weighing against custody); *Long v. State*, 837 P.2d 737, 740 (Alaska App. 1992) (noting that a factor in favor of finding no custody was that "the tone of the interview had been low-key, not heavy-handed").

[12] *See Murray*, 796 P.2d at 850-51 (concluding that the defendant was not in custody, in part, because he was "never physically restrained in any way").

[13] *See id.* at 850 (noting that defendant was not indicted until two months after the (continued...)

However, there are some facts that potentially point toward the conclusion that Prater-Cox was in custody, including: the accusatory nature of some of the questioning;[14] the fact that Prater-Cox was never told he was free to leave;[15] the officer's interference with Prater-Cox's phone call from his mother; and the decision to seize Prater-Cox's phone "as evidence."

We note that the intercepted phone call is particularly troublesome because *Miranda* was specifically concerned with "incommunicado interrogation" — that is, questioning that occurs when the defendant was "cut off from the outside world."[16] Denying the defendant access to outside support can create an environment of police domination, which in turn creates a serious risk of coercion and false confessions. Even the dissenting Justices in *Miranda* acknowledged that "the granting or refusal of requests to communicate with lawyers, relatives or friends have all been rightly regarded as important data bearing on the basic inquiry [of whether the interrogation was coercive]."[17]

Ultimately, however, Prater-Cox was not "cut off from the outside world." His questioning took place in a public setting (a hotel parking lot), and he was allowed

---

[13] (...continued)
interview).

[14] *See Smith*, 38 P.3d at 1158-59 ("[A] reasonable person would conclude he was in custody if the interrogation is close and persistent, involving leading questions and the discounting of the suspect's denials of involvement." (quoting 2 Wayne R. LaFave et al., *Criminal Procedure* § 6.6(f), at 540 (2d ed. 1999)).

[15] *See id.* at 1157 ("Assurances from the police that a person is not under arrest and is free to leave generally indicate a lack of custody but are not conclusive.").

[16] *Miranda v. Arizona*, 384 U.S. 436, 445 (1966).

[17] *Id.* at 534 (White, J., dissenting).

to speak to his mother. The troopers did not "aggravate[] the situation," and the interaction remained "light" and "peaceabl[e]," as a review of the audio recording shows.

Under the totality of these circumstances, we agree with the trial court that the troopers' conduct did not subject Prater-Cox to a restraint on his freedom to the degree associated with a formal arrest and that he was not in custody for *Miranda* purposes. But we note that this is a close case. Under slightly different facts — if, for example, more police officers had been involved, or if the interrogation had lasted for a longer period of time, or if it had taken place in a more coercive environment (like an interrogation room or the back of a police car) — we might easily reach a different result.[18]

---

[18] *See, e.g.*, *United States v. Cavazos*, 668 F.3d 190, 194 (5th Cir. 2012) (concluding that the defendant was in custody when he was handcuffed at home while a dozen officers searched his home, the interrogation lasted more than an hour, the defendant was followed and monitored when he went to the bathroom, and he was only allowed to use his telephone so that the officers could overhear conversation); *United States v. Moore*, 235 F. Supp. 3d 1329, 1333 (S.D. Fla. 2017) (concluding that the defendant was in custody when the officer removed the defendant's jacket, seized the cell phone located in his pocket, demanded the cell phone's password, and physically escorted the defendant into the interview room); *United States v. Lawton*, 216 F. Supp. 3d 1281, 1292 (D. Kan. 2016) (concluding that the defendant was in custody when the officer pulled up behind him with emergency lights flashing, preventing the defendant from driving away; four officers, all wearing official tactical vests and carrying firearms, effectively surrounded the defendant's car, an officer engaged in coercive questioning by telling the defendant that lying to the officer was a federal offense, the officer took the defendant's cell phone and placed it on top of his car, and the defendant was not told that he could terminate the encounter); *Smith v. State*, 585 S.E.2d 888, 893-94 (Ga. App. 2003) (concluding that the defendant was in custody when the defendant was questioned about her involvement in a theft offense, four officers were present, the defendant was not free to drive her car away, officers seized her cell phone limiting her access to anyone not present at the scene, and officers separated the defendant from her four-month-old baby); *State v. McMillan*, 55 P.3d 537, 540-41 (Or. App. 2002) (concluding that the defendant was in custody when he was stopped on suspicion of soliciting

(continued...)

Conclusion

The judgment of the superior court is AFFIRMED.

[18] (...continued)
a prostitute; the defendant was not free to leave, as the officer supervised him closely, the officer refused to let him make phone calls until they had resolved the prostitution charges, the officer told him that his partner would decide when he was "finished with the prostitute" whether he would be going to jail, and the officer confronted him with both circumstantial and testimonial evidence that alerted him to the fact that police had sufficient probable cause to arrest him for prostitution); *see also United States v. Swan*, 842 F.3d 28, 33 (1st Cir. 2016) (recognizing the temporary retention of the defendant's cell phone as weighing toward a finding of custody but ultimately concluding that the interrogation was noncustodial under the totality of the circumstances).